

DC-18-17620

Angie Avina

CAUSE NO. _____

In Re:

IRA E. TOBOLOWSKY,

Decedent,

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

**D-95TH
DISTRICT COURT**

**PETITIONER'S VERIFIED PETITION
PURSUANT TO TEXAS RULE OF CIVIL PROCEDURE 202**

COMES NOW, Petitioner The Estate of Ira E. Tobolowsky ("Petitioner"), and pursuant to Tex. R. Civ. P. 202, asks the Court to issue a subpoena duces tecum, requiring the production of documents by, and the oral depositions of, Respondent Dallas County Medical Examiner's Office ("Dallas ME") and Respondent Dallas Police Department ("DPD") (collectively, "Respondents") for the purposes of investigating potential wrongful death claims against other parties. In support thereof, Petitioner would respectfully show the Court as follows:

**I.
PARTIES**

1. Petitioner is the Estate of Ira E. Tobolowsky, by and through the Estate's executor, Michael Tobolowsky, who is a resident of Dallas County, Texas.

2. Respondent Dallas County Medical Examiner's office is a Dallas County governmental agency that maintains its principal place of business in Dallas County, Texas. The Dallas County Medical Examiner's Office may be served with process by serving it at its principal place of business, located at:

Dallas County Medical Examiner's Office
2355 North Stemmons Freeway,
Dallas, Texas 75207.

3. Respondent Dallas Police Department is a Dallas County governmental agency that

maintains its principal place of business in Dallas County, Texas. The Dallas Police Department may be served with process by serving it at its principal place of business, located at:

Dallas Police Department
1400 South Lamar Street,
Dallas, Texas 75215.

II.

BACKGROUND FACTS

4. Petitioner, as stated above, is the Estate of Ira E. Tobolowsky, deceased.

5. On Friday, May 13, 2016, Ira E. Tobolowsky was set on fire and burned alive in his garage in Dallas County. To date, no “suspects” have been named, arrested, or charged with the capital murder of Ira E. Tobolowsky.

6. As part of the investigation into the death of Ira E. Tobolowsky, the Dallas Police Department conducted investigations within the normal course of their business, including interviews, both recorded and written, and completed detailed reports, supplemental reports, detective reports, detective interviews, obtaining evidence through search warrants, and more.

7. As further part of the investigation into the death of Ira E. Tobolowsky, the Dallas County Medical Examiner’s office performed a full autopsy and completed a detailed autopsy report, with pictures, thereafter.

8. On multiple occasions throughout 2017 through the present, Petitioner and/or authorized representatives of Petitioner have requested—through open records requests or through the detectives assigned to the case—the above portions of the Dallas Police Department’s investigation file for the death of Ira E. Tobolowsky. To date, however, none of such documents and/or information has been produced by the Dallas Police Department.

9. Likewise, on multiple occasions throughout 2017 through the present, Petitioner and/or authorized representatives of Petitioner have requested—through open records requests or

through the detectives assigned to the case—the complete autopsy report and file pertaining to Ira E. Tobolowsky. To date, however, neither the autopsy report nor the autopsy file pertaining to Ira E. Tobolowsky has been produced by the Dallas County Medical Examiner’s Office.

10. Finally, in light of a meeting between the Chief of the Dallas Police Department and the family of Ira E. Tobolowsky, as well as comments made by other representatives of the Dallas Police Department, it is clear that the investigation into the death of Ira E. Tobolowsky has gone “cold,” and that Respondents are no longer conducting an *active investigation* into the death of Ira E. Tobolowsky, no further affirmative steps will be taken by Respondents to determine who wrongfully caused the death of Ira E. Tobolowsky.

III.

REQUEST FOR ISSUANCE OF A SUBPOENA

11. Pursuant to Texas Rule of Civil Procedure 202.2(d)(2), Petitioner is seeking the testimony, records and information requested in this Verified Petition for the purpose of investigating Petitioner’s potential wrongful death claim(s) arising out of the death of Ira E. Tobolowsky.

12. Petitioner seeks to obtain, through the issuance of at least two (2) subpoenas by this Court, the oral depositions of each Respondent, as well as the production by each Respondent of the materials set forth below.

13. Petitioner requests that this Court issue a subpoena, requiring Respondent Dallas Police Department to:

- a. Have a custodian of records appear for and testify at an oral deposition; and
- b. Produce to Petitioner any and all of the following items:
 - i. All surveillance video or other footage associated with or related to the death of Ira E. Tobolowsky and/or the investigation thereof;

- ii. All forensic reports, including attachments and supplements thereto, related to the death of Ira E. Tobolowsky and the investigation thereof;
- iii. All interviews conducted by the Dallas Police Department of “persons of interest” in connection with the death of Ira E. Tobolowsky;
- iv. All recorded statements taken by any officers, detectives, or other members of the Dallas Police Department relating to the death of Ira E. Tobolowsky;
- v. All interviews conducted by the Dallas Police Department of witnesses and/or possible witnesses to seek information related to the investigation into the death of Ira E. Tobolowsky;
- vi. A copy of all items obtained pursuant to search warrants issued in the investigation into the death of Ira E. Tobolowsky, which are capable of being copied without harm or contamination;
- vii. All photographs taken by or in the possession of the Dallas Police Department, which relate to the death of Ira E. Tobolowsky and/or the investigation thereof;
- viii. A complete copy of the Dallas Police Department’s entire investigative file for the death of Ira E. Tobolowsky, including all attachments and supplements thereto.

14. Petitioner further requests that this Court issue a second subpoena requiring

Respondent Dallas County Medical Examiner’s Office to:

- a. Have a custodian of records appear for and testify at an oral deposition; and
- b. Produce to Petitioner any and all of the following items:

- i. The complete Autopsy Report, including all attachments thereto, of the Dallas County Medical Examiner pertaining to Ira E. Tobolowsky;
- ii. Any recorded statements taken by, or in the custody of, the Dallas County Medical Examiner pertaining to Ira E. Tobolowsky;
- iii. Any photographs taken by, or in the custody of, the Dallas County Medical Examiner pertaining to Ira E. Tobolowsky;
- iv. Any supplemental reports by, or in the custody of, the Dallas County Medical Examiner pertaining to Ira E. Tobolowsky;
- v. Any interviews conducted by the Dallas County Medical Examiner, including interviews of possible witnesses, pertaining to Ira E. Tobolowsky;
- vi. Any investigation at the scene of Ira E. Tobolowsky's death by, or in the custody of, the Dallas County Medical Examiner pertaining to Ira E. Tobolowsky; and
- vii. A complete copy of the entire investigative and autopsy file from the Dallas County Medical Examiner's Office pertaining to the death of Ira E. Tobolowsky.

15. Further, Petitioner requests that both subpoenas described above require that the above records, documents, and information be produced to Petitioner prior to or at the time of each respective Respondent's oral deposition, at the following address: 4305 W. Lovers Lane, Dallas, Dallas County, TX 75209, attention Michael Tobolowsky.

16. With regard to the substance of the testimony Petitioner expects to elicit from the Respondents at their oral depositions, Petitioner expects to obtain testimony regarding the investigation completed by the Dallas Police Department and the Dallas County Medical Examiner's

Office into the death of Ira E. Tobolowsky, and possible persons responsible for Ira E. Tobolowsky's wrongful death.

IV.
INFORMATION EXPECTED

17. Petitioner expects to learn the following information from the requested subpoenas:
- a. the "plan" to commit the capital murder or to cause the wrongful death of Ira E. Tobolowsky;
 - b. the series of events that occurred on May 13, 2016, which resulted in the capital murder or wrongful death of Ira E. Tobolowsky;
 - c. the identity of the individual(s) who murdered or caused the wrongful death of Ira E. Tobolowsky;
 - d. information relating to the intent to cause harm to Ira E. Tobolowsky by the person who caused his death;
 - e. information relating to the identity of the individual(s) who acted or served as accessories, accomplices, or who otherwise participated in the capital murder or wrongful death of Ira E. Tobolowsky; and
 - f. other relevant information pertaining to the capital murder / wrongful death of Ira E. Tobolowsky.
18. Petitioner needs the above information from both Respondents because:
- a. Petitioner is attempting to investigate its potential claims for the wrongful death of Ira E. Tobolowsky and is unable to do so without the information requested above; and further,
 - b. Petitioner is unable to obtain such information without the issuance of valid subpoenas by this Court.

V.
HEARING

19. After service of this Verified Rule 202 Petition and Notice of the same, Rule 202.3(a) requires that the Court hold a hearing on the Petition and enter appropriate orders at or following such hearing. At the hearing on this Petition, Petitioner will show the Court that the likely benefit

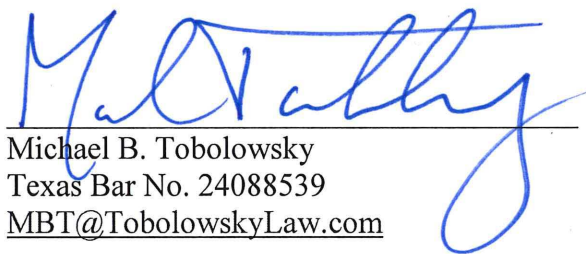
of allowing the Petitioner to take the requested depositions and obtain the requested documents to investigate a potential claim for the wrongful death of Ira E. Tobolowsky outweighs the burden and/or expense of the procedure. *See* Tex.R.Civ.P. Rule 202.4(a).

20. Accordingly, Petitioner requests that a hearing be set on this Petition and that after notice and hearing, the Court order the Dallas Police Department and the Dallas County Medical Examiner's Office to produce a Custodian of Records for oral deposition and to provide the materials referenced above.

PRAYER

WHEREFORE PREMISES CONSIDERED, for the reasons set forth above, Petitioner respectfully asks the Court to set this Verified Rule 202 Petition for hearing and, after such hearing, to issue subpoenas requiring the Dallas Police Department and the Dallas County Medical Examiner's Office to (a) appear for and testify at an oral deposition, and (b) produce and disclose the documents and other information requested herein.

Respectfully submitted,


Michael B. Tobolowsky
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TOBOLOWSKY P.C.
4305 W. Lovers Lane
Dallas, Texas 75209
214-352-0440 (Telephone)
214-352-0662 (Facsimile)

ATTORNEY FOR PETITIONER

VERIFICATION

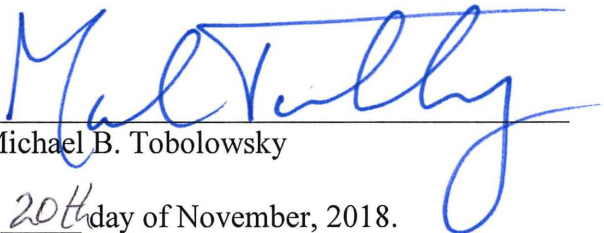
STATE OF TEXAS

COUNTY OF DALLAS

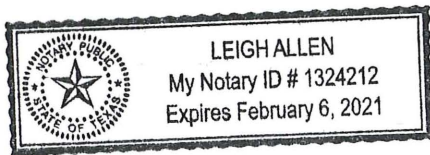
BEFORE ME, the undersigned Notary Public in and for the State of Texas, on this day personally appeared Michael B. Tobolowsky, and upon his oath did depose as follows:

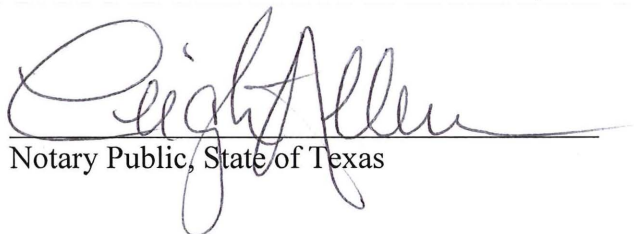
1. My name is MICHAEL B. TOBOLOWSKY. I am above the age of eighteen years of age, and I am fully competent to make this affidavit. I am of sound mind and have never been convicted of a felony or misdemeanor involving moral turpitude.
2. I have read the Petitioner's Texas Rule of Civil Procedure 202 Petition. The factual information stated therein is within my personal knowledge, and true and correct.

Further affiant sayeth not.


Michael B. Tobolowsky

SUBSCRIBED AND SWORN before me this 20th day of November, 2018.




Notary Public, State of Texas